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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 521 (LTS)

5 JOSEPH HUNTER,

6 Plaintiff.

7 -----x

8 New York, N.Y.

9 May 31, 2016

10:00 a.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the

16 Southern District of New York

17 MICHAEL LOCKARD

EMIL BOVE

Assistant United States Attorney

18 MARLON KIRTON, ESQ.

19 Attorney for Defendant

20 DIANE FERRONE, ESQ.

21 Attorney for Defendant

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Joseph Hunter.

4 Counsel, please state your appearances for the record.

5 MR. BOVE: Good morning, your Honor, Emil Bove and  
6 Michael Lockard for the government.

7 THE COURT: Good morning, Mr. Bove and Mr. Lockard.

8 MR. KIRTON: Marlon Kirton and Diane Ferrone for  
9 Mr. Hunter. Good morning, your Honor.

10 THE COURT: Good morning, Mr. Kirton. Good morning,  
11 Ms. Ferrone. Good morning, Mr. Hunter.

12 Mr. Hunter, are there any family members or friends of  
13 yours here today?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Who is here?

16 THE DEFENDANT: That's my sister.

17 THE COURT: Good morning. Thank you for coming to  
18 court today. And greetings as well to the other members of the  
19 teams here and also to the other spectators and members of the  
20 press.

21 We are here today for sentencing. I have received and  
22 reviewed the presentence investigation report which is dated  
23 May 7, 2015, including the recommendation and addendum. I've  
24 also received and reviewed voluminous submissions by defense  
25 and counsel for the government as follows: The opening defense

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1 submission dated October 3, 2015, which was originally filed  
2 with redactions, but without its accompanying exhibits and then  
3 refiled with redacted versions of its exhibits on October 26,  
4 2015. An unredacted version of the entire defense submission  
5 will be filed under seal. The defense submission contains ten  
6 exhibits; the defense objections to the presentence report, a  
7 report by Dr. Neil Blumberg dated September 12, 2014,  
8 Mr. Hunter's military discharge papers, Mr. Hunter's military  
9 service records, a news article relating to one of Mr. Hunter's  
10 friends in the military who was killed during a live fire  
11 exercise, Mr. Hunter's medical records, a list of Mr. Hunter's  
12 awards and commendations, a record of Mr. Hunter's employment  
13 history, an affidavit from counsel to defendant in another case  
14 who was also associated with the criminal enterprise to which  
15 Mr. Hunter belonged and a United Nations report dated July 18,  
16 2011 which also discusses the criminal enterprise to which  
17 Mr. Hunter belonged.

18 The publicly filed defense objections and Bloomberg  
19 report are partially redacted where the defense has withdrawn  
20 certain arguments and also redacted for other reasons approved  
21 by the Court.

22 Mr. Hunter's records are also partially redacted, as  
23 approved by the Court.

24 The defense has also submitted a memory stick  
25 containing seven video statements by members of Mr. Hunter's

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1 family and his friends. Defense counsel has been directed to  
2 file a copy of the video statements in the public file.  
3 Redaction of third party medical information has been  
4 authorized. The unredacted version will be filed under seal.

5 The Court has received and reviewed the government's  
6 opening sentencing submission which was filed in redacted form  
7 on December 9, 2015. The unredacted version of the submission  
8 will remain under seal.

9 The Court has received and reviewed the defense's  
10 February 2, 2015 supplement to its sentencing submission which  
11 included a second report by Dr. Blumberg dated January 28,  
12 2016. The Court has also reviewed and received, received and  
13 reviewed a letter from Mr. Hunter that was submitted by the  
14 defense on March 3, 2016 which was accompanied by certificates  
15 relating to classes and work that Mr. Hunter has undertaken  
16 while at the MCC. The Court directed the defense to file that  
17 report, Mr. Hunter's letter and the attachments to Mr. Hunter's  
18 letter on the public docket and I understand that that has been  
19 done.

20 MR. KIRTON: Yes, it has.

21 THE COURT: Thank you. The parties also filed a  
22 number of sentencing submissions under seal as approved by the  
23 Court. The government filed sealed letters on December 9,  
24 2015, March 10, 2016, April 25, 2016 and May 18, 2016. The  
25 defense filed sealed letters on February 2, 2016, April 15,

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1 2016, May 7, 2016 and May 23rd, 2016. The Court conducted a  
2 closed hearing on sentencing-related issues on April 28 and 29,  
3 2016. The transcript of that hearing is sealed for the reasons  
4 stated on the record and in certain orders of the Court.

5 To the extent that sentencing-related materials have  
6 been filed under seal in whole or in part the reasons for such  
7 sealed filings have been stated in sealed orders or on the  
8 record in the sealed proceedings as the case may be.

9 Are there any other written submissions that the  
10 parties intend to have me consider in connection with the  
11 sentencing?

12 MR. BOVE: Not that I'm aware, your Honor.

13 MR. KIRTON: No, your Honor.

14 THE COURT: Thank you. Mr. Bove, would you state the  
15 Government's position as to whether there are victims of the  
16 crimes of conviction who are entitled to notice under the  
17 Justice for All Act?

18 MR. BOVE: There are not, your Honor.

19 THE COURT: Mr. Kirton, have you read the presentence  
20 investigation report and discussed it with Mr. Hunter?

21 MR. KIRTON: Yes, I have, your Honor.

22 THE COURT: And, Mr. Hunter, have you reviewed the  
23 presentence report yourself?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And have you discussed it with your

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1 attorneys?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Kirton, do you have any objections or  
4 other issues with respect to the content of the report that you  
5 wish to address at this time that have not already been  
6 resolved?

7 MR. KIRTON: No, your Honor.

8 THE COURT: Are you still pressing the objection to  
9 the probation department's guideline computation?

10 MR. KIRTON: Yes, your Honor.

11 THE COURT: All right. I've read your written  
12 submission on that. Is there anything further that you want to  
13 say to that?

14 MR. KIRTON: No, your Honor.

15 THE COURT: All right. After I hear the government I  
16 will rule on that.

17 I believe that we do need to address a couple of  
18 housekeeping corrections to the presentence report, so as I  
19 understand it, I have approved the deletion of the final  
20 sentence of paragraph 18, footnote 1. Mr. Kirton, is the  
21 defense still asking for that deletion?

22 MR. KIRTON: Yes.

23 THE COURT: All right. I will direct the probation  
24 department to delete the final sentence of footnote 1 to  
25 paragraph 18 and am I still being requested to delete in its

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1 entirety the footnote to paragraph 30?

2 MR. KIRTON: That's correct.

3 THE COURT: All right. And I take it -- this is  
4 consistent with earlier rulings, so the government doesn't want  
5 to be heard on these?

6 MR. BOVE: That's correct, your Honor. Thank you.

7 THE COURT: Very well. So the footnote to paragraph  
8 30 will also be deleted.

9 Mr. Bove, does the government take any position on the  
10 issues raised by the defense or do you have any other  
11 objections and, here's a compound question, is the government's  
12 position on the guidelines computation the same as was set  
13 forth in the December 9, 2015 sentencing submission?

14 MR. BOVE: The government doesn't have any issues to  
15 be addressed with respect to the PSR except the guidelines  
16 calculation as your Honor noted and our position is set forth  
17 in our opening sentencing memorandum.

18 THE COURT: Thank you. All right, and so I will now  
19 rule on the guideline computation issues. First, the  
20 presentence report applies a two-point enhancement relating to  
21 the use of an aircraft to the Count One computations and Count  
22 One is properly treated as a separate group.

23 As the Court has already found in earlier sentencings,  
24 the guideline enhancement for use of a non-commercial aircraft  
25 for the import of controlled substances, which is Section

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2D1.1B3A of the guidelines, requires the actual importation of a controlled substance. Here the crime of conviction was a conspiracy to import narcotics but no narcotics were actually imported. Because the harm contemplated by the guideline provision is the actual importation, not the intent to import, I will not apply the two-point guideline enhancement for use of an aircraft. Therefore, the guideline calculation for Count One is a base level of 36, plus three points for a leadership role resulting in a final level of 39 for Count One.

I adopt the grouping analysis from the PSR. Count Two, which involves conspiracy to murder two different individuals, is grouped separately with Count Four, which is the firearms conspiracy two times with an adjusted offense level of 40 for each group, that being one group for each of the murder objects of the conspiracy.

Because the level for Count One is now 39 and the level for each of the other groups is 40, the result of the grouping analysis is a base level of 40 plus three units, which brings us to 43, which is then reduced for acceptance of responsibility to a final offense level of 40.

And so just a couple of further remarks in response to the defense objection. The objection that the firearm count should have been grouped with the narcotics conspiracy count is overruled. The firearms offense very clearly related to the murder conspiracies and so is properly grouped with the murder



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1 conspiracy counts, and because there were two separate  
2 individuals to be murdered, there are properly two separate  
3 groups for each of the murder conspiracy counts with their  
4 accompanying firearms component. And that firearm count is  
5 related to a crime of violence, which is the murder conspiracy  
6 as to each individual. Under guidelines section 1B1.2D, a  
7 conspiracy to commit multiple offenses is treated as separate  
8 offenses for grouping purposes and so since the murder  
9 conspiracy in question involved two intended victims, it's  
10 treated as separate counts within the grouping analysis. And  
11 so I will order the following changes to the PSR in this  
12 connection: Paragraph 76 will be deleted, paragraph 80 will  
13 reflect a total level of 39 instead of 41. In paragraph 93,  
14 group 1 will have an adjusted offense level of 39. The offense  
15 level number for paragraph 94 will be 40 rather than 41. The  
16 offense level number for paragraph 96 will be 43 instead of 44.  
17 The offense level number for paragraph 100 will be 40 instead  
18 of 41 and in paragraph 138 the total offense level will be  
19 stated as 40 with the resulting guideline range of 292 to 365  
20 months of imprisonment. And paragraph 141 will be revised to  
21 refer to a total offense level of 40 rather than 41.

22 Are there any objections to these changes or any  
23 additional changes that the parties would need to be made?

24 MR. BOVE: No, your Honor. Thank you.

25 MR. KIRTON: No, your Honor.

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1 THE COURT: Thank you. I assume that the full  
2 three-point acceptance of responsibility credit should be  
3 given, but I now ask the government formally. Are you applying  
4 to have Mr. Hunter credited for that third point for acceptance  
5 of responsibility?

6 MR. BOVE: Yes.

7 THE COURT: That application is granted.

8 Are there any restitution issues here?

9 MR. BOVE: No, your Honor.

10 THE COURT: What is the government's position as to  
11 forfeiture?

12 MR. BOVE: Your Honor, we're going to ask that the  
13 Court enter an oral order of forfeiture today. The government  
14 estimates that we will submit a proposed order of forfeiture to  
15 be applied jointly and severally with respect to the other  
16 defendants in this case in the amount of approximately between  
17 400 and \$450,000. We're going through some calculations and  
18 going through the evidence to finalize that calculation right  
19 now.

20 THE COURT: And so today you would be asking me to  
21 order Mr. Hunter to forfeit the proceeds of his crimes up to  
22 \$450,000?

23 MR. BOVE: Yes, your Honor. Thank you.

24 THE COURT: Any objection to that iteration,  
25 Mr. Kirton?

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1 MR. KIRTON: Yes, your Honor.

2 THE COURT: I'll hear you.

3 MR. KIRTON: Ms. Ferrone will --

4 MS. FERRONE: We understand it's up to 450. We just  
5 wanted the record to be clear that we had asked for some  
6 additional information on the calculation and are awaiting that  
7 information and there's also some proposed language in the  
8 proposed forfeiture order that we received at the time of the  
9 plea that counsel, defense counsel has some questions about.  
10 So while I don't think we have an objection to a proposed  
11 forfeiture order forthcoming, the defense does have some issues  
12 with the proposed order that we received at the time of the  
13 plea agreement.

14 Thank you, your Honor.

15 THE COURT: Thank you. And so, and let me ask  
16 Mr. Bove a question about the joint and several number. I  
17 don't have the numbers right in front of me, but I think  
18 co-defendants had lower numbers than what you're proposing for  
19 Mr. Hunter?

20 MR. LOCKARD: Yes, your Honor. I'll address the  
21 forfeiture question. So the numbers that had been discussed  
22 with respect to the other defendants concerned the funds  
23 received by those defendants. Mr. Hunter received the gross  
24 amount of funds and then parceled them out to the others, so  
25 the numbers that the government will propose will be different

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1 but the total amount of joint and several liability will come  
2 out to be approximately the same when you add up the other  
3 individuals and compare to it Mr. Hunter's figure.

4 THE COURT: And so it will be joint and several in the  
5 sense that Mr. Hunter would get credit for payments by the  
6 other defendants. This, of course, doesn't raise the liability  
7 of the other defendants --

8 MR. LOCKARD: Correct.

9 THE COURT: And is it the government's intention with  
10 respect to this joint and several language that any payments by  
11 Mr. Hunter would be credited dollars for dollars against the  
12 individual liabilities of the other co-defendants?

13 MR. LOCKARD: That's one of the issues we want to work  
14 out and make sure that the mechanics work out in a manner  
15 that's appropriate and don't unfairly benefit or detriment any  
16 particular defendant but that is the idea that this joint and  
17 several liability the other individual joint and several  
18 obligations will be capped at a certain level and that's part  
19 of the calculation we'll be going through.

20 THE COURT: All right, so I will say that he will be  
21 ordered to forfeit the proceeds of his crimes in an amount to  
22 be determined up to \$450,000 and the liability will be joint  
23 and several with those of his co-defendants. And, Ms. Ferrone,  
24 I recognize there are matters of the language of the order as  
25 well as quantification that still need to be worked out.

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1 MS. FERRONE: Thank you, your Honor.

2 THE COURT: Before I invite counsel to speak further  
3 to sentencing issues I want to note for your attention that I  
4 intend to impose an additional special condition on  
5 Mr. Hunter's supervised release that would prohibit him from  
6 all foreign travel during the term of supervised release.  
7 Probation has already proposed a condition prohibiting foreign  
8 employment. This would be intended to close the loop on  
9 opportunities to engage in surreptitious activity abroad. And  
10 so if you have any objection or would like to be heard on that,  
11 you could include that in your sentencing remarks.

12 Counsel, is there anything we need to take up at the  
13 sidebar before I hear your sentencing arguments?

14 MR. BOVE: No, your Honor.

15 MR. KIRTON: No, your Honor.

16 THE COURT: Thank you. Mr. Kirton, whenever you're  
17 ready, I'll hear from you first.

18 MR. KIRTON: Thank you, your Honor. Your Honor,  
19 first, before I start my actual remarks, I just want to point  
20 out one issue that was raised in our prior filing. We argued  
21 that my client did not try to escape from his handcuffs at the  
22 time he was processed at the MCC at the time he was first  
23 brought to the Southern District. It's our position that it  
24 didn't happen. I had a conversation with the government about  
25 this. They did not reference that in any of their filings,

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1 it's not in the probation report, there's no BOP report or DEA  
2 report that that happened. It's our view that that incident  
3 never happened.

4 THE COURT: It was my understanding through some prior  
5 communications that the government said it was not going to  
6 press that as a relevant fact.

7 MR. BOVE: That's correct and remains accurate, your  
8 Honor.

9 THE COURT: All right. And so the attempted escape  
10 from handcuffs issue is not one that's in the factual record  
11 here and not one that I am taking into account in any way.

12 MR. KIRTON: Thank you, your Honor.

13 Good morning. It's our position that the Court should  
14 sentence my client to a reasonable non-guidelines sentence of  
15 ten years of incarceration. It's also our view that Mr. Hunter  
16 should serve his sentence at the federal facility in Lexington,  
17 Kentucky, that would allow for visits from his friends and  
18 family who live in both Evansville, Kentucky and Luisville,  
19 Kentucky and it's also five miles from a VA Medical Center.

20 I'm just going to focus on three areas. PTSD, post  
21 traumatic stress disorder arrest as relates to 18, United  
22 States Code, 3553(a), also the probation report and weave in  
23 information from my client's military history as well as  
24 information from his friends and family that are located on the  
25 flash drive of the videotape.

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1           So last night there was a show on PBS. It's a  
2 recurring series called POV, Point of View, and last night's  
3 topic was called "Men of Valor," which details the accounts of  
4 veterans returning from overseas, in this case Iraq. In that  
5 piece the men lived in a veteran's home somewhere in the United  
6 States and were going through counseling. The counseling  
7 involved them getting counseling from a counselor and also  
8 involved their family members and loved ones being involved in  
9 that process also.

10           So there was a conversation with one of the veterans  
11 and his wife, and she started out by saying, and when you came  
12 home -- and he finished the sentence and said and when I came  
13 home, I was completely different. And that's what happens when  
14 people suffer from PTSD. The person that they knew, the person  
15 that they loved, after they come down, become afflicted with  
16 this condition, they become different. I've had conversations  
17 with my client's niece who said that Mr. Hunter was like a big  
18 brother to her. He treated her like they were brother and  
19 sister, took her out, used to babysit for her, they played,  
20 they went out, they had conversations and she really  
21 appreciated Mr. Hunter's presence in her life at that time.

22           And when I asked her to be a character witness when I  
23 thought we were going to have this trial, she hesitated.  
24 Because one of the problems she had was she couldn't reconcile  
25 the person she grew up with, the person that she loved, the

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1 person who was like a big brother and the person who was facing  
2 the charges in this case. It's just something she couldn't  
3 reconcile. So she had a conversation with her boss, she had a  
4 conversation with her pastor, she spoke with her husband and  
5 eventually she agreed to be a character witness at the trial,  
6 had the trial taken place she submitted a video for the Court's  
7 consideration. This is what happens to people with PTSD, they  
8 become different people. It affects their behavior.

9 It's our position, your Honor, that Mr. Hunter has  
10 PTSD, there's no denying it. Dr. Blumberg said that on two  
11 reports, he tested Mr. Hunter twice on two occasions with two  
12 separate criteria, no malingering, he wasn't lying, Mr. Hunter  
13 tested positive for severe PTSD as well as depression. He has  
14 it.

15 Now, the government submitted reports by one of their  
16 experts that called into question some of the findings made by  
17 Dr. Blumberg, but it's our position that analysis was flawed.  
18 Number one, their expert never viewed the video submitted to  
19 the Court as well as to the government which details my  
20 client's life before he was arrested. Also, the expert never  
21 viewed the letter submitted to the Court about his experiences  
22 in the service and why, how he contracted PTSD. Now, the video  
23 statements as well as the letter to the Court were handed over  
24 to the government before their expert submitted their report.  
25 So I'm not really sure why she didn't look at those documents,



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1 but it's in our view that their criticism of Dr. Blumberg's  
2 report is flawed. Had she looked at those videos it would have  
3 given her some information about how long Mr. Hunter had PTSD.

4 My client's wife said that at some point he was  
5 stationed, I forget which base, but he was a drill sergeant.  
6 So he had to work with those people coming into basic training.  
7 It was a very, very difficult position for my client to have,  
8 to get up three or four in the morning, working until ten or  
9 eleven at night, it was very trying. And she noticed there  
10 were changes to his behavior. He became irritable and moody,  
11 used to yell a lot at the kids, yell a lot at her and then  
12 became withdrawn. So this was many, many years before he was  
13 arrested in this case, many, many years before he served in  
14 Iraq, that he started to show signs of PTSD.

15 Thirdly, my own observations. I was assigned to this  
16 case October 1, 2013. I believe Mr. Hunter came into the  
17 Southern District sometime that weekend, maybe that Friday or  
18 Saturday, and I saw him for the first time that Monday before,  
19 a conference before this Court. I spoke to him, gave him the  
20 conversation about the case, the normal conversation, the  
21 normal conferences. Then we came upstairs. Before the Court  
22 came out I had about five minutes to speak to my client and I  
23 noticed that he was weeping. Now, I've been practicing for a  
24 while, I've seen people cry. But this was a bit different. It  
25 seemed as if he had no control over his emotions, couldn't help

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1 himself. So I put on the record during that conference that I  
2 was concerned about my client's mental and emotional health,  
3 that he may need medical attention. Based on the objective  
4 reports from Dr. Blumberg, based on the information given by my  
5 client's wife and sons about my client's behavior and based on  
6 my own observations, I think it's pretty clear that Mr. Hunter  
7 has PTSD. That's important because it's our position that the  
8 Bureau of Prisons has no protocol to treat persons afflicted  
9 with PTSD and certainly not military veterans suffering from  
10 PTSD, unlike the Veterans Administration which has a dedicated  
11 PTSD protocol. It's also battle specific and it also involves  
12 friends and family members of the veteran to assist in their  
13 treatment.

14 So the BOP, I didn't submit this, but there's -- I  
15 want to use the right phrase. There's a psychology treatment  
16 program that was part of -- there was an e-mail, part of the  
17 Department of Justice website, Federal Bureau of Prisons, which  
18 outlines the psychological treatment protocols that are in  
19 effect as of May 26, 2016. It's a pretty long document and  
20 there's nothing in there that offers treatment for PTSD and  
21 there's certainly nothing in there that offers PTSD for  
22 veterans who have been in conflicts.

23 We submit to the Court as we stated in our sentencing  
24 memorandum that because Mr. Hunter's a veteran, he's suffering  
25 from PTSD, it's a factor that the Court can take under

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1 consideration under 18, United States Code, 3553(a). All the  
2 cases we cited in our submission are cases with veterans who  
3 have PTSD, who received substantial prison terms and all  
4 received below guidelines because of the BOP's inability to  
5 treat PTSD and as of May 26, 2016 it's still our position that  
6 they still don't have the ability to treat persons afflicted  
7 with PTSD like Mr. Hunter.

8 THE COURT: I will just say, there were two particular  
9 cases that were referred to in the footnote in your  
10 submissions. One of those cases is entirely under seal so I  
11 can't ascertain what happened and the other we found a  
12 transcript of the sentencing where the PTSD issue was mentioned  
13 but I did not, at least in that transcript, come across as a  
14 particularized ground for an extraordinary adjustment of the  
15 sentence, although there was what seemed to be below-guidelines  
16 sentence at the end of the day.

17 MR. KIRTON: Is that the John Erickson case?

18 THE COURT: There was one we could find nothing and  
19 one we could find a little something on, so this is the one we  
20 found something.

21 MR. KIRTON: The John Erickson case was an extremely  
22 extended factfinding by the Court as to what ability the BOP  
23 had to treat Mr. Erickson for his condition.

24 THE COURT: I believe that was the one.

25 MR. KIRTON: Now, in terms of the issue of the arrest.

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1 Again, Mr. Hunter accepted responsibility for everything he's  
2 done in this case. So when I say duress, I'm talking about  
3 sentencing duress. It's clear in our filings and in other  
4 documents --

5 THE COURT: I'm sorry, before we leave PTSD, I just  
6 want to make sure that I am accurately apprehending the thrust  
7 of your 3553(a) argument. You're arguing not that PTSD was a  
8 mentally incapacitating or compromising driver in the  
9 commission of the crimes or something that would relieve,  
10 warrant leniency in terms of lesser responsibility for the  
11 crimes, but rather you're saying that the effective provision  
12 of correctional or medical treatment aspect of 3553(a) would  
13 counsel both a reduction of the sentence because your position  
14 is that the BOP can't effectively provide needed treatment and  
15 also would counsel a particular designation recommendation to  
16 Lexington, Kentucky for particular involvement even during the  
17 period of custody in the VA's program?

18 MR. KIRTON: I'm saying yes to the second query. The  
19 first one I'm going to address now, actually. So I'm making a  
20 separate argument regarding that part of it.

21 THE COURT: Thank you.

22 MR. KIRTON: So the next subject would be duress. And  
23 this is where the PTSD/duress intertwine. It's our position in  
24 our filings that the government's chief cooperator in this  
25 case, Paul LeRoux, is a bad person. He's just a bad person.

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1 Mr. LeRoux, as noted in the case of United States v. Moran Oz,  
2 has admitted to killing multiple people. Mr. LeRoux has  
3 admitted to the selling technology to the Republic of Iran  
4 while that country was under U.S. and U.N. sanctions.

5 Mr. LeRoux admitted to selling prescription pills illegally.

6 Mr. LeRoux admitted to selling illegal drugs. And that's just  
7 in that case. We've submitted other documents that show that  
8 Mr. LeRoux bribed government officials. Mr. LeRoux arranged  
9 for someone to be arrested falsely because he thought that  
10 person stole from him. Mr. LeRoux engaged in threats of  
11 people. In fact, in the affidavit submitted by Moran Oz's  
12 attorney he said at some point Mr. LeRoux and his associates  
13 showed a photograph of a person that worked for him, of that  
14 person's family, and said, "You see this? I can get to them."

15 Mr. LeRoux, I submit to the Court, Mr. Hunter's former  
16 boss, the head of the LeRoux organization, is a bad person.  
17 Mr. LeRoux threatened Mr. Hunter. It was a gold deal at the  
18 beginning of Mr. Hunter's employ and it didn't go well.  
19 Mr. LeRoux called Mr. Hunter and threatened him and his family.  
20 And why is that important? It's important because at the  
21 beginning of his employ, Mr. LeRoux would pay Mr. Hunter via  
22 wire transfer. And when you send money back from Asia to the  
23 United States, you have to have someone to receive it, so he  
24 had the name of my client's wife, the name of my client's son,  
25 my client's home address. So the threat that was made to

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1 Mr. Hunter was made with Mr. Hunter's express knowledge that at  
2 the time the threat was made he knew where Mr. Hunter lived, he  
3 knew where his wife lived, he knew his wife's name, he knew his  
4 son's name and he knew where his son lived. So we submit to  
5 the Court that these were threats made directly to Mr. Hunter.  
6 This shows and it's clear that Mr. Hunter was afraid and this  
7 is an issue regarding duress that the Court could take into  
8 consideration. Now, on top of that --

9 THE COURT: And temporally you're placing this  
10 particular incident in the beginning of the relationship, the  
11 2009 time frame with the gold-related work?

12 MR. KIRTON: 2009, 2010. The first year in the  
13 beginning of the relationship. On top of that, your Honor,  
14 Mr. Hunter later became aware that Mr. LeRoux killed former  
15 associates. He became aware of this. So the fact that  
16 Mr. Hunter directly was threatened by Mr. LeRoux, the fact that  
17 Mr. Hunter later became aware that others were killed by  
18 Mr. LeRoux, falsely charged by Mr. LeRoux, that government  
19 officials were bribed by Mr. LeRoux, this created a great deal  
20 of fear of Mr. LeRoux by Mr. Hunter.

21 Now, add to that that Mr. Hunter was suffering  
22 probably at the time from PTSD. Now, we note that what his  
23 family said about his time in the service as a drill sergeant,  
24 he started to show signs then. We also know he served two  
25 tours in Iraq as a private contractor after his tour in the

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1 military was over. He enlisted in the Army in 1983, he was  
2 discharged in 2004 and he served two years in Iraq after he was  
3 discharged from the Army. So Mr. Hunter had PTSD, which gives  
4 you a heightened sense of fear, heightened sense of arousal.  
5 Give you an example. In the piece last night there was a  
6 gentleman, a veteran who was in the program who was talking  
7 about driving and the problems just driving in traffic. He  
8 said that there was someone next to him that cut him off and he  
9 said to himself, he said this in a group, don't you know that  
10 if I was in Iraq I would tell me gunner to take out your engine  
11 and if you started up I would take you out. But because he's  
12 home, obviously he can't do that.

13 So someone who has PTSD is going to perceive threats,  
14 I submit to the Court, in a heightened fashion. So the average  
15 person I submit to the Court would be under duress under  
16 Mr. Hunter's circumstances in Asia, but add to that PTSD, I  
17 think it shows the level of fear that he had of Mr. LeRoux.  
18 Some of it was legitimate and some of it became increased  
19 taking into account his PTSD.

20 I submit to the Court, obviously, you know, he has  
21 accepted responsibility. We're not saying that this is a  
22 trial, we're not saying that, but it's factors in the case law  
23 that the Court can consider under 18, United States Code,  
24 3553(a). So to answer the court's prior point, yes, PTSD is a  
25 factor that plays a role in how he perceived the threat from

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1 Mr. LeRoux at the time he was threatened and also later on when  
2 he found out that others were threatened.

3 Well, why did he stay? Why did he go home and come  
4 back? I'm sure the government will talk about the two  
5 instances where he came home and went back and worked for  
6 Mr. LeRoux. Well, again, Mr. LeRoux knows where home is.  
7 Mr. LeRoux, born in Zimbabwe, raised in South Africa,  
8 Australian citizenship, worked in the Philippines, lived in  
9 Thailand, he's everywhere. Mr. LeRoux, according to the  
10 government's own figures, made at least \$300 million in the  
11 prescription pill scheme, the case that's pending in Minnesota  
12 right now. So Mr. LeRoux is a man with money, a man with  
13 international connections and more importantly, he knows where  
14 he lives. I submit to the Court, and this is what the videos  
15 say, Mr. Hunter did what he had to do under certain  
16 circumstances to preserve his family.

17 I would say that's the primary motivation for him  
18 going back. So I submit to the Court --

19 THE COURT: For a higher level and more money, but  
20 that was -- are you saying, is it you're representing that the  
21 going back wasn't initiated by Mr. Hunter, that there was some  
22 "better come back and take this position" kind of threat?  
23 You're giving me all kinds of different colors on your  
24 positions. I'd like you to give me some type of color on this  
25 one.



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1 MR. KIRTON: He became aware from an associate of  
2 Mr. LeRoux that a person named Dave Smith was killed. Dave  
3 Smith was an associate of Mr. LeRoux and he was murdered,  
4 according to a conversation Mr. Hunter had with another  
5 associate, because of some fallout he had with Mr. LeRoux. And  
6 Mr. Hunter was instructed to come back. Mr. LeRoux wanted him  
7 to come back. There was some back and forth about whether or  
8 not Mr. Hunter wanted to go back. He thought, well, if I just  
9 give him an outrageously high figure for my salary and some  
10 demands maybe he'll just go away and leave me alone. It didn't  
11 happen. He met the financial demands, he met the  
12 organizational demands and he went back to Asia. This is the  
13 second time he came home. So hopefully that gives the Court  
14 some context of the circumstances in which he went back and how  
15 the money and organization request played into that situation.

16 Now, in terms of my client's -- the third issue is  
17 weaker than the other issues, it's the probation report. Both  
18 sides agree and the Court has found that the guidelines in this  
19 case is 293 to 365 months. The probation department  
20 recommended a sentence below the guidelines range and cited a  
21 number of factors. One, his untreated medical condition, his  
22 state of mind, the fact that this is a distinction operation,  
23 his lack of criminal history and his military service. now,  
24 we've submitted a number of documents concerning my client's  
25 military service. He served from 1983 to 2004. He was

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1 discharged honorably in 2004 as a sergeant first class. He  
2 received, I think it's about 58 different citations, awards,  
3 commendations, during his time in the military and at least one  
4 from the State of Kentucky was granted, he was given the award  
5 of being a Kentucky colonel, which is one of the highest awards  
6 given out by Kentucky. He was also admitted into the New York  
7 City Police Department. So Mr. Hunter I believe served his  
8 country with honor and with dignity. That's one of the factors  
9 cited in the probation report for a recommendation of a below  
10 guidelines sentence.

11 I've already talked about his mental state. I already  
12 talked about his state of mind. I'm sure the Court knows this  
13 was a sting operation. No one was actually killed, no drugs  
14 were actually sold. I know for legal purposes it makes no  
15 difference, just another factor cited by the probation  
16 department in their recommendation of a below the guideline  
17 sentence.

18 Also, the probation department said something  
19 interesting. It said they would have recommended a lower  
20 sentence if they could. Now, the number that they recommended,  
21 they had a higher guidelines range to the Court, was some 30  
22 months, 30 months below the guidelines range that they  
23 calculated. Yet they argue that if they could have recommended  
24 a lower sentence they would have. The only reason they didn't  
25 is because Mr. Hunter had more leadership points than Mr. Gogol

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1 and Mr. Vamvakis so they cited the fact that the other two  
2 co-defendants that were similarly situated in this case had  
3 lower leadership points.

4 So I submit to you that there are quite a few factors,  
5 quite a few factors that argue in favor of a below the  
6 guidelines sentence: My client's PTSD diagnosis. The fact  
7 that my client was under severe duress when being employed by  
8 Paul LeRoux. The fact he served this country with dignity, the  
9 fact he has friends and family that talk about how loyal he  
10 was, how loving he was. Some of the videos talk about, one of  
11 his friends said Joe is a very loyal person. If you borrow  
12 \$100 from him on Monday and you say you're going to give it  
13 back to him on Friday at 5:00, he goes to call you on Friday at  
14 5:00. He's a very bright guy. We talked to his mom. His mom  
15 said he's a bit trusting, a bit naive. That's how he is. He's  
16 a straight shooter.

17 Again, I'm not trying to denigrate or lessen the  
18 severity of this case. I'm talking about the testimonials of  
19 people that know him, people that love him, people that have  
20 seen him and been with him most of his life.

21 Your Honor, the Court takes into consideration all  
22 those factors. We would submit that a non-guidelines sentence  
23 with a recommendation that he served his time in Lexington,  
24 Kentucky for his sentence.

25 Now, one last story from the video, from the movie.

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1 Now, it's very difficult for me to really understand what  
2 military service is like. I've never served in the military,  
3 neither has my co-counsel. It's a different world. It's a  
4 different set of -- it's a different set of thinking about  
5 things. So there was a story by one of the veterans, who was  
6 on a convoy in Iraq. Apparently, convoys are supposed to go  
7 from point A to point B, not supposed to stop, not supposed to  
8 swerve, not supposed to ask for directions, just supposed to  
9 go. If anything tries to get in their way, to stop them, they  
10 won't stop because if convoys stop they could be subject to  
11 ambush by insurgents who are looking to destroy U.S. troops.  
12 So he related a story about a military convoy vehicle, going  
13 straight, apparently a little girl didn't know anything, just  
14 being a kid, ran out into the middle. She ran into the middle  
15 of the convoy. He had a choice. He could have swerved, could  
16 have stopped, could have done what he was instructed to, keep  
17 going. I don't know what I would have done. In that instance  
18 he kept going. And when they got back to base, he was a  
19 complete wreck. He had an emotional breakdown. Because though  
20 he was trained to do this thing, we're all human, sometimes  
21 things happen and it's just becoming very difficult to deal  
22 with.

23 I don't know what it's like to serve in the military.  
24 I don't know what it's like to have somebody threaten my  
25 family. I don't know what it's like to have PTSD. If you take

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1 all those factors into consideration, your Honor, as well as  
2 the recommendation of the probation department, I would urge  
3 the Court to render a non-guidelines sentence, below the  
4 guidelines sentence, ten years with a recommendation he serve  
5 his time at the federal facility at Lexington, Kentucky.

6 THE COURT: Thank you, Mr. Kirton. Mr. Bove?

7 MR. BOVE: Thank you, your Honor. As the Court is  
8 aware, the government's position is a guidelines sentence is  
9 appropriate here and I'd like to try to address some of  
10 counsel's remarks today. I'll start with the more  
11 duress-related comments and then speak a little bit to the PTSD  
12 arguments.

13 From time to time throughout this case defense counsel  
14 has used the term "outrageous". What's truly outrageous in  
15 this case, your Honor, on the record before you, is the  
16 defendant's conduct. What's truly outrageous in this case,  
17 your Honor, is that the day after Memorial Day in a case  
18 involving this defendant with his history, defense counsel  
19 makes arguments about people who honorably served their  
20 country, people who were actual veterans with distinguished  
21 service.

22 THE COURT: Well, Mr. Hunter is an actual veteran with  
23 distinguished service in the military and this case is about  
24 what he did afterwards. I get your bigger point, but --

25 MR. BOVE: And that goes to my third point, your

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1 Honor. What's outrageous is that that service record is used  
2 in this case as a mitigating argument. What happened here,  
3 your Honor, is that the defendant used the training that he  
4 received from the United States military to commit and  
5 facilitate incredibly serious crimes, and that's true with  
6 respect to the offense of conviction, that is, international  
7 drug trafficking and conspiracy to kill a DEA agent and a  
8 confidential source. These are crimes that go to the very core  
9 of the law enforcement function, of the criminal justice  
10 function that this Court administers, and those things, your  
11 Honor, those three pieces, from the perspective of the  
12 government, that's the outrageous part of this case.

13 There were some comments made today about a movie  
14 Mr. Kirton saw recently. Mr. Hunter made his own movie in  
15 Bukat in March 2013 where he described his own involvement and  
16 the history of the organization that he was proudly a member  
17 of. These are a group of men who even prior to the sting  
18 operation in this case committed actual murders and those are  
19 facts that are set out in our sentencing submission that he  
20 described in the video. I'm referring now to page 5 and I'm  
21 referring specifically with respect to one of those murders, to  
22 the murder of Katherine Lee in the Philippines. To the extent  
23 that Paul LeRoux ran an organization that was dangerous, and  
24 there's not much dispute about that, your Honor, it was  
25 dangerous in large part, your Honor, because he had men like

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1 Mr. Hunter working for him.

2 This is a man who comes to the Court as a result of  
3 greed, not duress. Your Honor touched on some of these themes  
4 while Mr. Kirton was speaking and making an argument about the  
5 timing of when Mr. Hunter first left the organization. He then  
6 of course returned. He returned for a larger salary. It's the  
7 government's understanding that the salary increase that made  
8 that a persuasive option to him was just a few thousand dollars  
9 more per month. It was not an outlandish amount of money  
10 relative to the number and the seriousness of the crimes that  
11 were being committed.

12 And again, when describing this duress argument,  
13 Mr. Kirton says, well, Mr. Hunter became aware that certain  
14 murders had been committed. Mr. Hunter ultimately participated  
15 and facilitated some of those murders and those are factors  
16 that the Court can and should consider with respect to the  
17 nature and history and personal circumstances of this defendant  
18 which we submit far outweigh any of the mitigating  
19 circumstances that counsel identified with respect to whether  
20 there's merit to any of them. This duress argument, your Honor  
21 in light of the fact Mr. Hunter left and then returned to the  
22 organization simply because he wanted to make more money, in  
23 light of the fact, as the Courts is aware, that he knew that  
24 Timothy Vamvakias left the organization because he didn't get  
25 enough vacation time in his view and then returned and in view

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1 of the fact Mr. Hunter actually turned down murders for hire  
2 requested by Paul LeRoux, for those three reasons alone, your  
3 Honor, there's no merit to this duress argument.

4 To get back to my theme, the accurate theme, these are  
5 crimes that were committed as a result of greed. The  
6 defendant's e-mails right around the time of the conspiracy to  
7 kill the agent and to kill the source really gets to the heart  
8 of the matter about his state of mind and these are set out at  
9 page 9 and 10 of our sentencing submission where Mr. Hunter is  
10 actually, he's given the option by effectively the DEA,  
11 somebody acting at the direction of the DEA to send Mr. Hunter  
12 e-mails and they ask do you want this job? Is this a job that  
13 you will do? He says effectively, my guys will handle both  
14 jobs. They just need good tools. And here's where we get to  
15 the heart of the matter after that, your Honor. Hunter says,  
16 "What about me? Do I get a small bonus for this also?" That's  
17 what drove this crime, your Honor. Greed. And this continuing  
18 argument about duress in the face of that record and the face  
19 of the points about Mr. Hunter's departure and return to the  
20 organization, the evidence that other people had done the same,  
21 the evidence of murders for hire, in light of the evidence of  
22 what Mr. Hunter said to his co-defendants in this case, in his  
23 own movie that he made, in light of these e-mails, persisting  
24 in this argument about duress it does bear on sentencing under  
25 3553(a). In our view it bears on it as follows: This is not



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1 somebody sitting behind me who has truly accepted  
2 responsibility for these offenses. This is not someone who is  
3 remorseful about these crimes. I made clear today that as a  
4 guidelines matter we agreed that the three-level reduction is  
5 appropriate, but this is not an acceptance of responsibility.  
6 This is not remorse. This is somebody who continues to this  
7 day in the face of evidence to the contrary this argument that  
8 this crime is really not his fault.

9 Now, with respect to the arguments presented today  
10 about PTSD. Again, Mr. Kirton said a lot from his perspective  
11 about what happens to people who have PTSD. I think that  
12 Dr. Paradis' report makes clear that what does not happen is  
13 people with PTSD go out and commit murders, engage in other  
14 conduct that could serve as a trigger back to the things that  
15 initially led to that diagnosis or condition in the first  
16 place. Even Dr. Blumberg has effectively acknowledged in light  
17 of the government's argument and the fact he was able to  
18 supplement his report several times, there's no causal  
19 connection here between the diagnosis and the conduct in this  
20 case. And that your Honor from the perspective of the  
21 government eviscerates that argument that the PTSD is a  
22 mitigating feature at this sentencing as to the conduct.

23 In any event, Mr. Blumberg's report is not reliable.  
24 It's not reliable because Mr. Hunter lied to Dr. Blumberg.  
25 That's been acknowledged. It's acknowledged in the defense's

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1 opening sentencing submission.

2 Mr. Kirton also made some comments today about his own  
3 observations of Mr. Hunter and how those also are consistent  
4 with Mr. Blumberg's analysis or mitigating. Mr. Hunter lied to  
5 Mr. Kirton. That is also acknowledged and I'm referring to  
6 footnote 19 to the opening defense submission. As a result  
7 this report we submit is not reliable. It's not reliable for  
8 the technical reasons that Dr. Paradis identified. It's not  
9 reliable for the common sense reason that this is somebody who  
10 intentionally misled Dr. Blumberg and in subsequent reports  
11 very little is done to account for why that happened or what  
12 the impact is on the diagnosis other than the diagnosis  
13 effectively stays the same.

14 For those reasons, your Honor, our position is that  
15 the PTSD diagnosis is not mitigating here under 3553(a).

16 We acknowledge that to the extent there are steps the  
17 Court could take about making recommendations about housing to  
18 the BOP to ensure Mr. Hunter receives treatment, that those  
19 could and should be undertaken. We have no issue with those.  
20 There is a letter from the BOP attached to our submission that  
21 describes the treatment programs that are in place. It's  
22 simply not true that the BOP is ill equipped or not able to  
23 deal with these things. It's a matter that's received a large  
24 measure of attention in this proceeding and we expect the BOP  
25 will be mindful of this, but it's not a reason to impose a

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1 non-guidelines sentence in this case.

2 Your Honor, this is a case about a criminal  
3 organization. Mr. Hunter pled guilty and agreed that in  
4 connection with the offense he was the acting leader of that  
5 organization with respect to crimes that are incredibly grave  
6 and, as I said at the outset, strike at the very core of the  
7 process that is administered in this courthouse and by my  
8 office. For that conduct alone we believe that a guidelines  
9 sentence would be appropriate. But in light of all the context  
10 that has become clear through the evidence phase, the  
11 statements that Mr. Hunter made insofar as they bear on his  
12 history and what he did prior to the onset of the sting and as  
13 far as he made clear that he had every intent of carrying this  
14 out just so he could make more money, so he could get a bonus,  
15 it's the government's position that a guidelines sentence is  
16 appropriate.

17 THE COURT: Before you sit down I realize there's one  
18 consideration that is in the Court's mix that neither of you  
19 addressed directly and so I'll ask Mr. Bove to address it and  
20 give Mr. Kirton the opportunity to address it as well. The  
21 Court has been considering Mr. Hunter's age, his current age  
22 and his projected age in a guidelines sentence in the context  
23 of post-custodial treatment and reintegration. He was 48, I  
24 believe, when he was arrested. The bottom of the guidelines  
25 sentence even as adjusted would have him coming out in his

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1 early 70s, I think even with good time. And the Court is  
2 mindful of the research on recidivism reducing with older  
3 people and also on all the practical considerations of someone  
4 coming out at an advanced age who needs reintegration and  
5 mental health treatment and probably has some practical need to  
6 be able to do some work and so among the mix of considerations  
7 in the Court's hands now is the question of whether some  
8 reduction that would allow him to emerge before the age of 70  
9 combined with a longer period of supervised release might be  
10 warranted under all of these circumstances, so I wanted to give  
11 you a chance to respond to that.

12 MR. BOVE: If I could have one moment, your Honor.

13 (Pause)

14 MR. BOVE: Thank you, your Honor.

15 THE COURT: Hang on a second. Defense counsel are  
16 still consulting. Are you ready?

17 MR. KIRTON: Yes.

18 THE COURT: Mr. Bove.

19 MR. BOVE: Your Honor, the government's position is  
20 that the risk of recidivism here is not one of the principal  
21 aggravating features of the sentencing. From the government's  
22 perspective the nature and seriousness of this offense, the  
23 history of this defendant, the need to promote respect for the  
24 law, and I'll pause there because the need to promote respect  
25 for the law is a feature in every sentencing as a matter of

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1 statute, but in this case it should, from our perspective,  
2 carry a great deal more weight in light of the incredible  
3 disrespect for the law and law enforcement that is reflected in  
4 this defendant's conduct.

5 So our position is that while we acknowledge that  
6 research and some of the additional opinions regarding it, that  
7 that consideration is outweighed by these other factors and  
8 these are matters that probation will be in a position to  
9 account for upon release from whatever sentence your Honor  
10 determines.

11 THE COURT: Thank you.

12 MR. KIRTON: Your Honor, we did not specifically  
13 address that in our filings. I don't know if the probation  
14 department did. I don't think that they did. I will say that  
15 Mr. Hunter is now 51 years old. If he receives even a minimum  
16 statutory sentence he would be over 60. We agree with the  
17 Court that is a factor --

18 THE COURT: A minimum statutory sentence would count  
19 back to the time of arrest, that's ten years from time of  
20 arrest minus good time credits.

21 MR. KIRTON: Yes. A guidelines sentence or something  
22 approaching a guidelines sentence would insure that my client  
23 would be either 70 or close to 70 years old and I think the  
24 Court is correct that there are cases, there are  
25 interpretations of 3553(a) that suggest that older defendants

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1 have a lower risk of recidivism. We would urge the Court to  
2 take that into consideration when rendering or considering any  
3 of the factors under United States Code 3553(a). I also remind  
4 you of a comment that was made by my client's mother who was  
5 almost 80 years old. She said I won't be able to come to New  
6 York to speak to the judge, but I just want to be able to see  
7 my son out of prison before I die. She just did not want to  
8 die while Mr. Hunter was incarcerated in this case. So in  
9 light of all the factors suggested, interpretations of 3553(a),  
10 I think the Court should take into account Mr. Hunter's age in  
11 the guidelines sentence or a sentence approaching the  
12 guidelines in this case.

13 THE COURT: Thank you.

14 MR. KIRTON: There's a few other points that we wanted  
15 to make. I don't know if the Court -- it's going to take  
16 actually three minutes, three minutes? Just to respond to two  
17 of the things that Mr. Bove --

18 THE COURT: Three minutes.

19 MR. KIRTON: First, there's a very well-known movie  
20 called "American Sniper," which that character is based on a  
21 true-life person. I don't remember his name, but that person  
22 was killed by a friend who had PTSD. So what Mr. Bove said,  
23 the doctor suggested that people with PTSD don't kill people,  
24 that's a clear example of that happening. Not to say that that  
25 justifies or excuses anything. He's accepted responsibility

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1 for everything he's done. He's not putting the blame on anyone  
2 else in this case, but I just wanted to address that one point.

3 Secondly, the report of the government's expert  
4 concurred with Dr. Blumberg that there was no malingering by  
5 Mr. Hunter during those two tests. Dr. Blumberg said he found  
6 no evidence of malingering, Dr. Paradis concurred. They both  
7 said anything is possible, but there was no objective evidence  
8 of malingering in the tests before Dr. Blumberg, the two tests  
9 performed by Dr. Blumberg.

10 THE COURT: Thank you. Mr. Hunter, would you like to  
11 speak for yourself before I decide your sentence?

12 THE DEFENDANT: Yes, your Honor. Good morning, your  
13 Honor.

14 THE COURT: Good morning.

15 THE DEFENDANT: Much has happened in the last few  
16 years, most that I would not wish upon anyone. Nonetheless, it  
17 has happened. I've conspired for the crimes that I'm here  
18 today to be sentenced of. I apologize to you, your Honor, to  
19 the Court and to the citizens of the United States for my  
20 actions. For these crimes I will be labeled, a fair label that  
21 I will carry for the rest of my life, but a label that I will  
22 strive to peel away bit by bit by being a good citizen and a  
23 good man.

24 I've had much time to reflect on everything in my life  
25 from the smallest detail to the most tragic events. I've

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1 searched for meaning and I've searched for the reasons why, but  
2 ultimately I've come to the conclusion that these are not the  
3 questions to be asked, but only God knows these answers and  
4 only He knows the path I travel and how it ends. Instead, I've  
5 looked at my mistakes and my weakness and my flaws. I've  
6 looked for a solution to fix everything within myself and I  
7 found that the error was always with me. Simply put, at times  
8 I've forgotten to place God at the forefront of my thoughts and  
9 actions. I have failed. I failed my God, my family and  
10 myself.

11 If I had but one thought, I would not be here today.  
12 If I only had asked myself what God would want me to do. If I  
13 had placed this question at the forefront of my thoughts I  
14 would be much safer, a better person and with my family. It's  
15 so simple, what would God want me to do, and so easily  
16 forgotten. This is my biggest crime and one that I intend to  
17 fix the rest of my life.

18 Now I address my family, friends and all those that  
19 pray for me. They know my heart and they know my soul. They  
20 are not embarrassed for me, they're not ashamed of me. They  
21 love me. But I am embarrassed for them. I have shamed them; a  
22 good family, good friends, ones that still stand by me today,  
23 and I am forever grateful. I love each and every one of them.  
24 I love you. Thank you, your Honor.

25 THE COURT: Thank you, Mr. Hunter. That was clearly a



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1 very difficult statement for you to make, but I am glad that  
2 you have made it publicly and I am glad to hear from you here  
3 and in your letter that you are devoting attention to examining  
4 your past and to planning for a future that is very different  
5 from your past and that you understand the hurt that you have  
6 done but the opportunity that you have going forward to lead a  
7 different sort of life.

8 I'm going to ask that everyone just sit quietly for a  
9 few short minutes while I reflect on everything that I have  
10 heard today and make my final decision as to the sentence which  
11 I will then explain and announce. I'm just going to ask my law  
12 clerk to bring this cup of water to Mr. Hunter.

13 (Pause)

14 THE COURT: Thank you all for your patience. I adopt  
15 the factual recitation set forth in the presentence report as  
16 discussed earlier. This Court has discretion subject to the  
17 applicable statutory provisions in exercising its power under  
18 Section 3553(a) of Title 18 to determine the particular  
19 sentence to be imposed in each particular case. That statute  
20 requires the Court to consider a number of specific factors and  
21 sentencing goals, including the nature and circumstances of the  
22 offense, the defendant's history and characteristics, the need  
23 for the sentence imposed to reflect the seriousness of the  
24 offense, promote respect for the law and provide just  
25 punishment, deterrence, protection of the public and the

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1 provision of needed training, medical care or other treatment  
2 to the defendant in the most effective manner.

3 The Court must also consider the types of sentences  
4 that are available, the provisions of the guidelines and the  
5 need to avoid unwarranted sentencing disparities among  
6 defendants with similar records who have been found guilty of  
7 similar conduct. The Court is required to impose a sentence  
8 that is sufficient but not greater than necessary to comply  
9 with the statutory sentencing factors.

10 As to the sentencing guidelines I conclude that the  
11 applicable guideline offense level is 40, based on the adjusted  
12 calculations in the report and that the applicable criminal  
13 history category is I. I also adopt the grouping of charges  
14 analysis in the report. Accordingly, the advisory guideline  
15 range for a custodial sentence is from 292 to 365 months of  
16 imprisonment and I have used the November 1, 2015 edition of  
17 the sentencing guidelines manual in making these  
18 determinations.

19 I have considered the question of whether there is an  
20 appropriate basis for a departure from this advisory range  
21 within the guidelines system and I find no grounds for  
22 warranting a departure within the guidelines system. And so I  
23 have continued on to consider carefully the full range of  
24 Section 3553(a) statutory sentencing factors and goals and to  
25 consider all of the information that has been put before me in

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1 light of those factors and goals. I will address some of the  
2 factors and facts here.

3 As to the nature and circumstances of the offense, the  
4 offense conduct here is extremely serious. Mr. Hunter has  
5 pleaded guilty to participating in an international conspiracy  
6 to murder a DEA agent and a confidential source for the DEA for  
7 which sophisticated firearms were to be used. He has also  
8 pleaded guilty to participating in a narcotics importation  
9 conspiracy. The interdiction of drug trafficking and the  
10 prevention of related violence are major and very challenging  
11 law enforcement priorities. Threatening the lives of those  
12 involved in this effort and the civilians seeking to assist  
13 them is a very serious offense against the United States.  
14 Among other things, agents and cooperating witnesses who risk  
15 their lives to infiltrate violent groups outside the United  
16 States in connection with these operations must be able to be  
17 confident that those who seek to kill them will be captured,  
18 incapacitated and punished severely so that they and others  
19 with similar skills and opportunities will be deterred from  
20 using them and particularly from using experience gained in the  
21 military to provide security for criminal groups.

22 These crimes were not isolated events and Mr. Hunter's  
23 work history with a dangerous multinational organization and  
24 his surveillance records with his meetings with co-conspirators  
25 shows he boasted prior violent work including overseeing the

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1 murders of two women by hit teams. He specifically recruited  
2 others for assassination assignments which he referred to as  
3 bonus work and he provided specification of weapons, including  
4 silencers and elaborate gear. He approached this murder plot  
5 as meticulously and thoroughly as he approached his legitimate  
6 work in his military career. This deadly plotting against a  
7 DEA agent and a cooperating witness and his participation in  
8 securing what he believed was a very massive shipment of  
9 dangerous drugs bound for the United States are grave and  
10 serious crimes. The defense argues that Mr. Hunter committed  
11 these crimes while under duress because he feared the violent  
12 nature of the leader of the criminal conspiracy of which  
13 Mr. Hunter was a member and that Mr. Hunter was afraid of  
14 reprisals against himself or his family if he were to refuse to  
15 carry out the work.

16 While the Court has no doubt that Mr. LeRoux was a  
17 dangerous and terrifying man, the Court finds no factually or  
18 legally appropriate ground for mitigation in the defendant's  
19 duress argument. As a legal matter duress is an exculpatory  
20 doctrine. To his credit Mr. Hunter takes responsibility for  
21 his own culpable decisions and actions here. To the extent  
22 Mr. Hunter is making a factual argument that he is entitled to  
23 leniency because he felt he had to choose between killing  
24 others or be killed himself or seeing his family members  
25 harmed, the Court, frankly, does not find the claim credible.

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1 Although the record indicates that Mr. Hunter had difficult  
2 choices to make and that he perceived potential risks in  
3 disobeying orders from Mr. LeRoux, it also demonstrates that he  
4 had in the past found ways to separate himself from LeRoux or  
5 to disobey LeRoux and he suffered no adverse consequences. He  
6 also knew that his co-defendant Vamvakias left and returned  
7 without adverse consequences. Mr. Hunter himself had  
8 voluntarily left the organization in the past suffering no  
9 adverse consequences for that decision and then rejoined the  
10 organization in a higher-ranking position and for increased  
11 pay. Although the defense rightly points out that Mr. Hunter  
12 worked for a dangerous individual, the evidence indicates that  
13 he chose to do so voluntarily and that he did so for money  
14 despite knowing that he had done and would do terrible things  
15 in aid of the organization himself.

16 Furthermore, even if the Court credits fear as part of  
17 the mix of motivations, leniency is not warranted on that  
18 account. Mr. Hunter voluntarily associated himself with  
19 Mr. LeRoux in the first place and stayed in Mr. LeRoux's employ  
20 long after he knew of and had involved himself in Mr. LeRoux's  
21 extensive criminal activity. The safety of law enforcement  
22 agents, those helping them, and of innocent people depend on  
23 right choices, even if those choices are life or death choices.  
24 As between killing someone sworn to uphold the law and risking  
25 his own demise at the hands of people he had chosen to join in

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1 criminal activity, Mr. Hunter made the dishonorable choice.  
2 His was a choice that betrayed society and the honor and trust  
3 that this country invested in his military career and his  
4 actions must be punished and deterred in a way that is strict  
5 and unequivocal.

6 The defense has also proffered expert evidence that  
7 Mr. Hunter suffered at the time of his crimes and continues to  
8 suffer at present from post traumatic stress disorder or PTSD  
9 and major depression. Even the defense expert acknowledges,  
10 however, that Mr. Hunter's psychiatric condition did not  
11 preclude him from appreciating the wrongfulness of his conduct  
12 or conforming his conduct to the requirements of the law and  
13 that statement is in the second Blumberg report from pages 1 to  
14 2. The Court finds no basis in the record for a finding that  
15 leniency is warranted because Mr. Hunter was mentally  
16 compromised at the time he committed his crimes.

17 Turning to Mr. Hunter's personal history and  
18 characteristics. Mr. Hunter is an extensively decorated  
19 veteran of the United States military and served honorably as  
20 both a soldier and an instructor from 1983 to 2004, receiving  
21 numerous service medals and commendations. By all accounts his  
22 military service was entirely commendable. It also took a toll  
23 on him and his family, taking him away from them when he was  
24 deployed for long periods of time abroad and when he served  
25 domestically as a drill instructor, introducing tension and

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1 conflict into the home. I recognize in this connection that  
2 veterans of our armed services who served in conflict  
3 situations and train others give immeasurable benefit to our  
4 country. We make extraordinary demands on them, entrusting  
5 them to confront and engage in violence on our behalf. We also  
6 entrust them with the challenging and essential responsibility  
7 of never turning that experience against us.

8 Video statements by Mr. Hunter's family members and  
9 lifelong friends demonstrate that there is deep affection,  
10 concern and respect for him in his family and among those who  
11 know him well. His wife and stepchildren have relied on him  
12 and are supportive of him now. As I noted a moment ago, I have  
13 reviewed reports by Dr. Blumberg that conclude that Mr. Hunter  
14 suffers and continues to suffer from PTSD and depression. The  
15 government has proffered a report by Dr. Paradis, a consulting  
16 expert whom the defense did not permit to examine Mr. Hunter  
17 that questions Dr. Blumberg's conclusions and methodologies.  
18 Dr. Blumberg has tendered a further report that responds to  
19 some of Dr. Paradis' questions and criticisms. The Court finds  
20 it easy to accept that Mr. Hunter, given his long military  
21 background, extensive military and post-military deployment to  
22 the war zone in Iraq and incidents of death and injury suffered  
23 by people close to him in the military is a troubled man who  
24 needs help coping with traumatic incidents in his past. It is  
25 similarly unsurprising that he should be suffering from

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1 depression or that, as Dr. Blumberg has concluded, his  
2 depression has begun to improve with the treatment he has  
3 received while in custody.

4           It is not necessary for the Court to resolve the  
5 disputed particulars of Dr. Blumberg's assessment. The  
6 evidence before the Court is sufficient to persuade the Court  
7 that a recommendation to the Bureau of Prisons of a thorough  
8 mental health assessment and appropriate treatment is in order  
9 and that mental health treatment must certainly be a condition  
10 of supervised release. The Court is not persuaded by the  
11 defense arguments that the Bureau of Prisons is incapable of  
12 providing effective assistance to Mr. Hunter. The Bureau of  
13 Prisons has provided him with helpful assistance thus far and  
14 far greater resources, including outside resources that the  
15 Bureau of Prisons determines that such are wanted will be  
16 available to him after he is designated to an institution  
17 following sentencing as well as during his supervised release  
18 period. Such resources will be crucial to his ultimate  
19 successful reintegration into domestic civilian society and his  
20 ability to obtain and maintain gainful legitimate employment.

21           His conduct while in custody has been honorable and  
22 he's shown that he is using his time to gain skills and to help  
23 others and that is documented in the certificates that he has  
24 provided to the Court and the Court commends that and  
25 encourages him to continue that.



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1           Mr. Hunter's age is also an important factor in the  
2 Court's determination of the appropriate sentence. He was 48  
3 at the time of his arrest. The minimum guideline sentence with  
4 good time in prison will have him serve until his early 70s.  
5 It is well established, as noted in counsel's remarks, that  
6 recidivism risk diminishes with age. Mr. Hunter's  
7 rehabilitation and reintegration to productive contributions to  
8 society will necessarily be short even if the Court shows some  
9 leniency in the sentence. A lengthy custodial sentence even if  
10 somewhat below guideline will serve the interests of  
11 punishment, protection of the public and promotion of respect  
12 for the law. A lengthy period of supervised release will  
13 provide protection of the public through oversight and  
14 limitations of his activities and will insure that supportive  
15 mental health and other services can be provided to him in an  
16 effective manner. Foreign employment and travel restrictions  
17 will help to protect the public during his period of supervised  
18 release by minimizing his opportunities to engage in covert use  
19 of his military skills in connection with criminal activity.

20           The Court has also considered thoroughly the matters  
21 that were discussed in the sealed hearings and submissions and  
22 finds that circumstances warranting some leniency have been  
23 established.

24           Turning again to the questions of punishment,  
25 deterrence and promotion of respect for the law. There is a

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1 significant need of deterrence and protection of the public in  
2 this case. Mr. Hunter committed very serious crimes and did so  
3 in aid of an ongoing international criminal conspiracy, some  
4 members of which are still at large. There is a need both to  
5 deter those individuals as well as others who may work for such  
6 organizations from engaging in similar conduct. Mr. Hunter  
7 demonstrated a willingness to use violence in aid of a criminal  
8 conspiracy. That conduct merits significant punishment. He  
9 demonstrates that he presents a danger to the general public as  
10 the conspiracy also involved a civilian target in addition to a  
11 law enforcement target and these matters counsel in favor of a  
12 significantly lengthy incarceratory component of Mr. Hunter's  
13 sentence.

14 The Court has also considered in its deliberations the  
15 need to avoid unwarranted sentencing disparity and here  
16 confirms that the sentence constructed here, like the sentences  
17 constructed for the co-defendants, are based on individual  
18 factors and are appropriate in relation generally to other  
19 similarly situated defendants and in relation to the specific  
20 co-defendants. And so, to sum up, taking as a whole, I find  
21 that the serious nature of the charged offense, combined with  
22 the need for punishment, deterrence and protection of the  
23 public, weighs in favor of a significant incarceratory  
24 component to Mr. Hunter's sentence, far lengthier than the  
25 sentence requested by the defense. However, in light of

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1 Mr. Hunter's age, the desirability of supported and supervised  
2 reintegration while he is still young enough to engage in  
3 gainful, lawful employment in support of himself and his  
4 family, his mental health treatment needs and other matters  
5 reflected in the record as a whole, the Court finds that a  
6 small variance from the advisory guideline custodial sentence  
7 coupled with a lengthier than recommended supervised release  
8 term is necessary to fashion a sentence that is reasonable,  
9 appropriate and no greater than necessary to address the  
10 statutory purposes of sentencing.

11 I will now state the sentence that I intend to impose.  
12 Mr. Hunter, will you and your attorneys please stand?

13 Mr. Hunter, it is the judgment of this Court that you  
14 are to serve 240, that is 240 months of imprisonment on each of  
15 your counts of conviction to run concurrently for a total of  
16 240 months of imprisonment before good time credit. This will  
17 be followed by ten years of supervised release on Count One and  
18 five years of supervised release on Counts Two and Four, also  
19 running concurrently, for a total of ten years of supervised  
20 release. The standard conditions of supervision 1 through 13  
21 as detailed in the sentencing guidelines manual will apply. In  
22 addition, you will be subject to the following mandatory  
23 conditions: You must not commit another federal, state or  
24 local crime. You must not illegally possess a controlled  
25 substance. You must not possess a firearm or destructive

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1 device. You must refrain from any unlawful use of a controlled  
2 substance and you must submit to one drug testing within 15  
3 days of placement on supervised release and at least two  
4 unscheduled drug tests thereafter as directed by the probation  
5 officer. You must cooperate in the collection of DNA as  
6 directed by the authorities.

7           You must also meet the following special conditions:  
8 You will be prohibited from securing employment outside of the  
9 United States. You will be prohibited from traveling outside  
10 of the United States. You must participate in a mental health  
11 program approved by the United States probation office. You  
12 must continue to take any prescribed medications unless  
13 otherwise instructed by the health care provider and you must  
14 contribute to the costs of the services rendered that are not  
15 covered by third party payment if you have the ability to pay.  
16 Your probation officer will work with you on that.

17           The Court authorizes the release of available  
18 psychological and psychiatric evaluations and reports to the  
19 health care provider. You must submit your person, your  
20 residence, your place of business, your vehicle and any  
21 property, computers, electronic communications, data storage  
22 devices and our other media under your control to a search on  
23 the basis that the probation officer has a reasonable suspicion  
24 that contraband or evidence of a violation of the conditions of  
25 release may be found. Any search must be conducted at a

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1 reasonable time and in a reasonable manner. Failing to submit  
2 to a search may be grounds for revocation of supervised  
3 release. You must inform any other residence that the premises  
4 may be subject to search pursuant to this condition.

5 You must report to the nearest probation office within  
6 72 hours of release from custody and you'll be supervised by  
7 your district of residence.

8 In light of your financial circumstances I will not  
9 impose any fine on you, but I will order that you pay to the  
10 United States the mandatory special assessment in the total  
11 amount of \$300, which is \$100 for each of your felony counts of  
12 conviction. This will be payable in quarterly installments of  
13 \$25 through the Bureau of Prisons inmate financial  
14 responsibility program.

15 The Court will recommend to the Bureau of Prisons that  
16 Mr. Hunter be afforded a prompt and thorough mental health  
17 assessment and appropriate treatment throughout his custodial  
18 term. The Court will also recommend that Mr. Hunter be  
19 designated to a suitable facility at or in the vicinity of  
20 Lexington, Kentucky to facilitate maintenance of his family  
21 ties and the potential viability of veterans supportive  
22 services. I'm just going to write this down so I remember to  
23 put it in the judgment.

24 I believe that this sentence as a whole is reasonable  
25 within the meaning of the law, sufficient, appropriate and no

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1 greater than necessary to satisfy the statutory purposes of  
2 sentencing which include punishment and deterrence.

3 Counsel, does any of you know of any legal reason why  
4 the sentence should not be imposed as stated?

5 MR. BOVE: No, your Honor.

6 MR. KIRTON: No, your Honor.

7 THE COURT: The sentence as stated is imposed.

8 Mr. Hunter, I must say something very important to you  
9 about appeal rights. To the extent you have not given up your  
10 right to appeal through your guilty plea you have the right to  
11 appeal this sentence. If you are unable to pay the cost of an  
12 appeal you may apply for leave to appeal in forma pauperis. At  
13 your request the clerk of the court will file a notice of  
14 appeal for you. Any notice of appeal must be filed within 14  
15 days of the judgment of conviction, so make sure you speak with  
16 your attorneys about this before you part company today. The  
17 deadline is short.

18 Mr. Bove, are there any remaining counts or underlying  
19 indictments that need to be addressed?

20 MR. BOVE: There are, your Honor. The government  
21 moves to dismiss them.

22 THE COURT: That motion is granted.

23 Mr. Hunter, I would just like to say a few more words  
24 and I thank you in advance for listening. I thank your sister  
25 as well. The crimes that you committed are serious and the

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1 sentence you received today reflects that. You have a  
2 distinguished record of service to this country. As you  
3 acknowledged, you made a series of bad decisions and you held  
4 yourself to the wrong standard, but although the sentence you  
5 received today is a long one it remains within your power to  
6 live the rest of your life, including the time you spend  
7 serving this sentence, honorably and in keeping with the values  
8 that you displayed for so long during your military service and  
9 in keeping with the love that you have for your family and the  
10 honor in which you are and continue to wish to be held by or  
11 family and community. So I urge you to continue to examine  
12 yourself and to think hard about the potential consequences of  
13 your actions before you take your action so that what you do  
14 now and for the rest of your life will be honorable, will  
15 reflect the honor that you yourself should carry and hold  
16 yourself to as a human being and that your future will be one  
17 of which you and your family can be proud even while you are  
18 serving your sentence.

19 Your wife and your stepchildren, your close family  
20 members and many friends support you and love you, and I know  
21 that, I watched an hour and 40 minutes of videos that told me  
22 that in many different ways from the mouths of many different  
23 people. Be an encouragement and a good example for them, even  
24 while you're in prison and I wish you and your family continued  
25 strength during this period and I wish you continued growth and

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1 a return to wholeness and the ability to have joy in positive,  
2 safe and constructive activity in every day, even while you're  
3 serving your sentence, and certainly when you return to your  
4 family.

5 When you are released you will have the guidance and  
6 support of the probation department in reestablishing your  
7 day-to-day life during your supervised release period. I urge  
8 you to see supervised release, although it is difficult to live  
9 under these restrictions, but understand that it is one of the  
10 many building blocks for a safe and successful life and the  
11 people in probation have resources that will be helpful to you  
12 in this ten-year period to make sure that the mental health  
13 resources in particular that you need can be provided as a  
14 backup or as a primary source and the people in probation truly  
15 are committed to helping you succeed.

16 That said, I do have to caution you that you have to  
17 comply strictly in every respect with all of the conditions of  
18 your supervised release. If you are brought back before me for  
19 violating any of the conditions I may send you right back to  
20 prison, so please don't ever put me in the position of having  
21 to make that decision.

22 I know that you will succeed. You will pay the price  
23 for your crimes by serving this sentence and all other aspects  
24 of your life are in your hands and so, again, I commend you for  
25 looking at what your standards should be and I encourage you in



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1 living to the standards that you see and you've identified and  
2 set for yourself and your family and I know that you will do  
3 that.

4 I will direct that counsel for the parties, the Bureau  
5 of Prisons and the Sentencing Commission be provided with a  
6 corrected copy of the presentence investigation report. All  
7 other copies of the report must remain confidential and if an  
8 appeal is taken counsel on appeal are to be permitted access to  
9 the report. I thank counsel for their extensive work in this  
10 case and for the information and assistance that they have  
11 provided to the Court in making this very difficult set of  
12 decisions.

13 I would ask that the marshals permit Mr. Hunter to  
14 acknowledge his sister as he leaves the courtroom and also to  
15 meet with counsel about the appeal issue. Thank you for making  
16 those accommodations. Counsel, is there anything else that we  
17 need to take up together?

18 MR. BOVE: Your Honor, I would just ask the Court to  
19 confirm that the oral order of forfeiture that we mentioned  
20 earlier is a part of today's proceedings.

21 THE COURT: Thank you. I did neglect to mention that.  
22 The sentence is amended as follows: Mr. Hunter is required to  
23 forfeit the proceeds of his crimes of conviction in an amount  
24 to be determined up to \$450,000. This obligation will be joint  
25 and several with those of his co-defendants.

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1 Counsel, is there any legal reason why the sentence as  
2 stated should not be amended to include this forfeiture order?

3 MR. BOVE: No, your Honor. Thank you.

4 MR. KIRTON: No, your Honor. Thank you.

5 THE COURT: The sentence as amended is stated and I  
6 apologize for having neglected to mention that.

7 Thank you. We are adjourned. I wish everyone well  
8 and I thank you.

9 (Adjourned)

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